



## **Order under Section 69 Residential Tenancies Act, 2006**

**Citation:** Almert v Buckingham, 2023 ONLTB 46652

**Date:** 2023-06-27

**File Number:** LTB-L-011674-23

**In the matter of:** upper, 157 ERIE AVE  
BRANTFORD ON N3S2G4

**Between:** Amanda Almert and Jackson Olumasai Landlords

**And**

Ashley Buckingham Tenant

Amanda Almert and Jackson Olumasai (the 'Landlords') applied for an order to terminate the tenancy and evict Ashley Buckingham (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes (L1); and because the Tenant has been persistently late paying rent and because the Tenant, another occupant of the rental unit or someone they permitted in the residential complex have substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant (L2).

This application was heard by videoconference on June 13, 2023. Only the Landlord Amanda Almert, attended the hearing.

As of 10:17am, the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

### **Determinations:**

1. The Landlords served the Tenant with a valid Notice to End Tenancy Early for Nonpayment of Rent (N4 Notice). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The Landlord testified that the lawful monthly rent is due on the 25<sup>th</sup> day of the month. The N1 notice to increase the rent entered as evidence by the Landlord shows the rent is increased on the 27<sup>th</sup> day of the month which would make the notice invalid.

4. The N4 notice served on the Tenant shows the rental period from the 1<sup>st</sup> day of the month to the last day of the month. As the rent is due on the 25<sup>th</sup> day of the month this also makes the N4 notice invalid.
5. The rent February claimed on the application was due on February 25, 2023. The application was filed on February 12, 2023, before the rent became due.

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6. Due to all these factors the tenancy cannot be terminated and an order for arrears cannot be issued based on this application.
7. The notice to terminate the tenancy for persistently late payment of rent has a termination date of March 31, 2023. The contents of the notice confirms that the rent is due on the 25<sup>th</sup> day of a month. Section 58 of the *Residential Tenancies Act* requires the termination date to be at the end of a rental period. The notice served by the Landlords does not comply with the Act. The tenancy cannot be terminated based on the N8 notice served by the Landlords.
8. The N5 notice served on the Tenant claims that the Tenant denied the Landlords access to the rental unit to perform repairs and do an annual inspection on three separate occasions between November 9, 2022 and February 4, 2023. As the Tenant was not present to explain these actions and the fact the Landlord has the right with proper notice, which the Landlord testified was provided, I find these actions substantially interfere with the Landlords' lawful right and privilege.
9. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

**It is ordered that:**

1. The tenancy between the Landlords and the Tenant is terminated on July 8, 2023.
2. The Tenant shall pay the Landlords \$186.00 for the cost of the application.
3. The Tenant shall also pay to the Landlords \$107.84 per day for the use of the unit starting July 9, 2023 until the date the Tenant moves out of the unit.
4. If the Tenant does not pay the Landlords the full amount owing on or before July 8, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 9, 2023 at 6.00% annually on the balance outstanding.
5. If the unit is not vacated on or before July 8, 2023, then starting July 9, 2023, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
6. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after July 9, 2023.

7. The Landlords' applications for non-payment of rent and persistently late payment of rent are dismissed without prejudice.

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2023 ONL TB 46652 (CanLII)

**June 27, 2023**

**Date Issued**

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**Greg Joy**

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor Toronto  
ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on January 9, 2024 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.